

UNITED STATES GOVERNMENT

Regional Counsel Opinion No. 131

Memorandum

ENVIRONMENTAL PROTECTION AGENCY
REGION IX

TO : RICHARD O'CONNELL, Director 302 DATE: June 7, 1973
Enforcement Division

FROM : CASSANDRA DUNN, Regional Counsel

SUBJECT: Hawaii's Act 100 Amendments Necessary for Participation
FWPCA 1972 NPDES

Dr. Richard Marland forwarded this office a copy of Amended Act 100 which altered Chapter 342, Hawaii Revised Statutes.

Our previous evaluation was based on "Act 100" as worded when approved by the Governor on May 22, 1972, and a proposed amendment to this Act which is dated January 8, 1973, on the "Justification Sheet." The new legislation does not add much to that which was contained in the prior amendment. To paraphrase, the new Bill would go beyond the old amendments in:

- (1) Amending Section 342-11 to raise the maximum civil fine to \$10,000 for each separate offense.
- (2) Adding to Section 342-31 a new subsection (9) which would define "New Source."
- (3) Deleting from Section 342-34 language regarding state funds for grants and adding provisions concerning federal funds, state funds and private funds.
- (4) Adding a new section 342-35 regarding conflict of interests of permit board members.

Thus, in considering the basic Act 100, and the newest amendments, our previous evaluation is updated with the following:

Entry No. 1. Previously "authority assumed." Proposed amendments should not change this conclusion.

Entry No. 2. Previously "authority assumed." Proposed amendments should not change this conclusion.

Entry No. 3. Previously "vague but comprehensive authority." Proposed amendments should not change this conclusion.

See Reg. Sec. 19, 15



- Entry No. 4. Previously "authority present." Proposed amendments should not change this conclusion.
- Entry No. 5. Previously "authority present." Proposed amendments should not change this conclusion.
- Entry No. 6. Previously "authority present." Proposed amendments should not change this conclusion.
- Entry No. 7. Previously "authority present." Proposed amendments should not change this conclusion.
- Entry No. 8. Previously "authority present." Proposed amendments should not change this conclusion.
- Entry No. 9. Previously "authority present." Proposed amendments should not change this conclusion.
- Entry No. 10. Previously "authority present" in part and "authority questionable" in part. Proposed amendments should not change this conclusion.
- Entry No. 11. Previously "authority lacking" in parts and "authority questionable" in part. Proposed amendments should not change this conclusion. *Regulations Sec. 9-14*
- Entry No. 12. Previously "authority lacking." Proposed amendments should not change this conclusion. *Sec. 6, 11*
- Entry No. 13. Previously "authority lacking." This requirement now determined to be inapplicable to Hawaii. Please see Point 2 of the March 14, 1973 letter from C. Dunn to A. Goda.
- Entry No. 14. Previously "authority lacking." Proposed amendments should not change this conclusion. *Sec. 15(c)(3)*
- Entry No. 15. Previously "authority lacking." Proposed amendments should not change this conclusion. *Sec. 15(c)(4)*
- Entry No. 16. Previously "authority lacking." Portions of requirement now determined to be inapplicable to Hawaii. Please see Point 3 of the March 14, 1973 letter from C. Dunn to A. Goda. *Sec. 11*
- Entry No. 17. See Entry No. 27.
- Entry No. 18. Previously "authority lacking." Although the addition of subsection (9) to Section 342-31 is relevant to this requirement, authority is still lacking. *Sec. 22(c)*

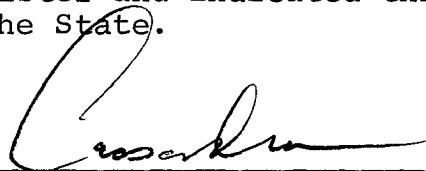
- Entry No. 19. Previously "authority lacking." Proposed amendments should not change this conclusion. *Sec 22(c)*
- Entry No. 20. Previously "authority lacking." Proposed amendments should not change this conclusion. *Sec 22(c)*
- Entry No. 21. Previously "authority lacking." Proposed amendments should not change this conclusion. *Sec 22(d)*
- Entry No. 22. Previously "authority lacking." Proposed amendments should not change this conclusion. *Sec. 22(d)*
- Entry No. 23. Previously "authority present" in part and "authority questionable" in part. Proposed amendments should not change this conclusion. *Sec. 22(d)*
Please see Point No. 4 in the March 14, 1973, letter from C. Dunn to A. Goda. 12
- Entry No. 24. Previously "authority lacking." Proposed amendments should not change this conclusion. *This is an A+W matter*
- Entry No. 25. Previously "authority present." Proposed amendments should not change this conclusion.
- Entry No. 26. Previously "authority present - qualification may invalidate authority." Proposed amendments should not change this conclusion. *Sec. 12*
See Point 5 of March 14 letter from C. Dunn to A. Goda.
- Entry No. 27. Previously "authority present" in part, "authority questionable" in part and "authority lacking" in part. Proposed amendments to Sec. 342-11 are pertinent to this requirement. The civil fines provided therein should satisfy the requirement of EPA Regulation 124.73(h). In our previous review, evaluation of this subsection was not included. Please note that our present evaluation of the requirements of 124.73(h) is "authority present" by virtue of Section 342-11. Also, see Item No. 6 in the letter from C. Dunn to A. Goda on March 14, 1973.
- Entry No. 28. Previously "authority lacking." Proposed amendments include a new section 342-35 which qualify for an "authority present" rating.

- Entry No. 29. Previously "authority lacking." Proposed *Sec. 6* amendments should not change this conclusion.
- Entry No. 30. Previously "authority lacking." Proposed *Sec. 15(c)(2)* amendments should not change this conclusion.
- Entry No. 31. Previously "authority probably lacking." Proposed amendments should not change this *Still true* conclusion. See Item No. 7 in the March 14 letter.
- Entry No. 32. Previously "authority lacking." Proposed *Sec. 12* amendments should not change this conclusion.

Again, as in the letter of March 14, it should be pointed out that most if not all of the inadequacies existing in Hawaii's legislation and proposed legislation can be met by rules and regulations.

When I was in Honolulu the latter part of May, Nelson Chang (Alan Goda's replacement) stated he was working on regulations to implement Act 100 as amended and they should be complete by August 1973.

He said he had recommended regulations parallel to those published in the Federal Register and indicated this will probably be agreeable with the State.


CASSANDRA DUNN

cc: AGCD
(Office of General Counsel, Washington, D.C.)